

STATE OF CALIFORNIA  
ENVIRONMENTAL PROTECTION AGENCY  
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:	)	Docket HWCA 00/01-4015
	)	
Denova Environmental, Inc.	)	<b>REVOCATION ORDER AND</b>
2610 North Alder Avenue	)	<b>AMENDED ENFORCEMENT ORDER WITH</b>
Rialto, California 92377	)	<b>IMMINENT AND SUBSTANTIAL</b>
EPA ID. No. CAT080022148;	)	<b>ENDANGERMENT DETERMINATION</b>
Gene S. Van Houten; and	)	
Robert V. Cole.	)	
Respondents.	)	Health and Safety Code
	)	Sections 25186 and 25187

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## **I. INTRODUCTION**

The Department of Toxic Substances Control ("Department") hereby issues this Revocation Order and Amended Enforcement Order with Imminent and Substantial Endangerment Determination (Order) to Denova Environmental, Inc. (Denova); Gene S. Van Houten; and Robert V. Cole (all three herein known as Respondents).

### **A. Summary of Order.**

1.1. Summary. This Order consists of: a) the Department's order revoking the interim status authorization for the Facility owned and/or operated by the Respondents; and b) the Department's order citing the Respondents for violations of the hazardous waste laws and regulations constituting an imminent and substantial endangerment, and assessing penalties for those violations.

1.1.1. Introduction. Section I of this Order provides a summary of the Order, and factual background information relevant to the Order.

1.1.2. Revocation Order. In Section II of this Order, entitled "Revocation Order", the Department revokes the interim status authorization for the hazardous waste management facility owned and operated by Respondents. The Revocation Order is based on numerous violations of the Hazardous Waste Control Law ("HWCL"), Health and Safety Code section 25100 et seq., occurring at the Respondents' facility, which show a repeating and/or

recurring pattern, and/or may pose a threat to public health or safety or the environment. The Revocation Order is also based on the Respondents' failure to comply with orders issued by the Department, and the Respondents' failure to provide the Department with required information for the Respondents' hazardous waste facility permit application.

1.1.3. Enforcement Order. In Section III of this Order entitled "Enforcement Order", the Department amends the Imminent and Substantial Endangerment Order issued on March 9, 2001. The Amended Enforcement Order cites the Respondents for numerous HWCL violations identified during the Department's inspections of the Respondents' Facility, and assesses penalties for these violations. The Department has determined that these violations pose an imminent and substantial endangerment to the public health or safety or the environment.

1.2. **Parties**.

1.2.1. The Department is the state agency with responsibility and jurisdiction to enforce the HWCL and the implementing regulations in California Code of Regulations t22, sections 66260 et seq.

1.2.2. Respondent Denova is a California corporation. Respondent Denova is a "person" as defined in Health and Safety Code section 25118. Respondent Denova is an "owner" and/or "operator" of a hazardous waste facility, as those terms are

defined in California Code of Regulations t22, section 66260.10.

1.2.3. Respondent Robert V. Cole (Cole) is an individual and the President of Denova. Respondent Cole has been an officer and director of Denova at all times relevant to this Order. Respondent Cole has at times relevant to this Order exercised control over the management decisions of Denova, including but not limited to decisions regarding hazardous waste management at the Facility. Respondent Cole is a co-trustee of the Robert V. Cole Family Trust dated May 14, 1991, which has an undivided one half interest in the real property on which the Denova facility is located.

1.2.4. Respondent Cole is a "person" as defined in Health and Safety Code section 25118. Respondent Cole is an "owner" and/or "operator" of a hazardous waste facility, as those terms are defined in California Code of Regulations t22, section 66260.10.

1.2.5. Respondent Gene S. Van Houten (Van Houten) is an individual and was the President of Denova at times relevant to this Order. Respondent Van Houten has been an officer and shareholder of Denova at times relevant to this Order. Respondent Van Houten has at times relevant to this Order exercised control over the management decisions of Denova including but not limited to decisions regarding hazardous waste management at the Facility. Respondent Van Houten and Eileen M.

Van Houten, husband and wife as joint tenants, have an undivided one half interest in the real property on which the Denova facility is located.

1.2.6. Respondent Van Houten is a "person" as defined in Health and Safety Code section 25118. Respondent Van Houten is an "owner" and/or "operator" of a hazardous waste management facility, as those terms are defined in California Code of Regulations t22, section 66260.10.

**B. Factual Background.**

1.3. **Facility.** Respondents own and/or operate an off-site hazardous waste storage and transfer facility at the following location: 2610 North Alder Avenue, Rialto, California 92377 (Facility). A map of the Facility is attached as **Exhibit 1**. The Facility is surrounded by residential and industrial land uses. Residences are located within 750 yards of the Facility.

1.4. **Interim Status Authorization.** Respondent Denova is authorized by the Department to manage hazardous waste at the Facility under interim status authorization pursuant to Health and Safety Code section 25200.5. Respondent Denova is authorized to accept a variety of hazardous wastes at the Facility, including waste explosives, reactives, flammables, oxidizers, and corrosives. Respondent Denova is authorized to store, transfer, and/or consolidate hazardous wastes at the Facility.

1.5. **Permitting History.**

1.5.1. In 1980, Broco, Inc. (Broco) submitted a Part A Application for a Hazardous Waste Facility Permit (Permit) to the United States Environmental Protection Agency (USEPA) and the Department of Health Services (DHS), The Department's predecessor agency. On September 18, 1981, DHS allowed Broco to manage hazardous waste at the Facility under interim status authorization, pending the Department's decision on Broco's permit application. DHS issued an interim status document (ISD) to Broco delineating conditions of Broco's interim status authorization.

1.5.2. In 1992, Broco Environmental, Inc. (BEI) purchased the facility and the interim status authorization from Broco. In 1995, BEI submitted to the Department a Closure Plan to close the open burn/open detonation (OB/OD) unit at the Facility.

1.5.3. In May, 1998, the Department issued a final decision to deny BEI's Permit based on numerous and repeated HWCL violations that occurred at the Facility. BEI filed an administrative appeal to the denial decision with the Department. BEI was allowed to continue to operate the Facility under interim status pending a final decision by the Department on the permit appeal.

1.5.4. In April, 1999, the Respondents purchased BEI and submitted to the Department a revised Part A Permit Application and a request for transfer of interim status authorization from



BEI to Denova.

1.5.5. On May 15, 2000, the Department issued a Notice of Decision Approving with Changes the Transfer of Interim Status Authorization (Transfer Approval) from BEI to Denova. The Transfer Approval restricted Denova's receipt, handling, and storage of certain hazardous wastes, including reactive wastes.

1.5.6. On June 23, 2000, the Department approved with modifications the Closure Plan for the OB/OD Unit at the Facility. To date, Denova has not completed closure of the OB/OD Unit.

1.6. **Enforcement History.**

1.6.1. In 1996 and 1997, the Department conducted inspections of the Facility, and cited BEI for significant and repeated violations of the HWCL and the hazardous waste regulations.

1.6.2. On January 14, 1997, an explosion occurred in intermodal container # 6 at the Facility, resulting in releases of hazardous constituents and injuries to several employees. Based on the explosion, the Department issued an Imminent and Substantial Endangerment Order on January 23, 1997, citing BEI for failure to operate and maintain the facility to minimize the possibility of releases, fire or explosion.

1.6.3. The Department conducted inspections of the Facility in April and July, 1999, and observed numerous HWCL

violations. On June 13, 2000, the Department issued a First Amended Enforcement Order (June 2000 Enforcement Order) citing Denova for numerous HWCL violations and assessing a penalty. The Department and Denova settled the violations alleged in the June 2000 Enforcement Order in a Stipulation and Order dated September 22, 2000 (September 2000 Stipulation and Order) (A Copy of the September 2000 Stipulation and Order is attached as **Exhibit 2**). In the September 2000 Stipulation and Order, Denova agreed that the violations in the June 2000 Enforcement Order will be deemed admitted for all purposes in any civil or administrative action between Denova and the Department. Denova also agreed to correct the violations cited in the June 2000 Enforcement Order, and to pay penalties to the Department for the violations.

1.6.4. On January 23-24, 2001, and February 6, 7, 8 and 9, 2001, the Department assisted the Federal Bureau of Investigation (FBI) in an investigation of Denova's hazardous waste operations. During this investigation, the Department observed numerous serious and repeat violations of the HWCL occurring at the Facility. During the FBI investigation, unstable explosive wastes, including waste contaminated with lead azide and/or lead styphnate, were discovered at the Facility, and were detonated by the FBI and San Bernardino County Sheriff's Department Bomb/Arson Detail on February 8 and 9, 2001.

1.6.5. On February 16, 2001, a fire occurred in the

intermodal container #3 (Oxidizer Bay) at the Facility, releasing hazardous constituents and presenting the potential for a larger conflagration at the Facility. The Department's investigation of the fire at the Facility revealed that on or about February 15, 2001, Respondents commingled incompatible hazardous wastes, including organics and oxidizers, such as potassium permanganate and ammonium nitrate, in a container that was stored in the Oxidizer Bay. The hazardous wastes that were commingled by Respondent may react when mixed, potentially causing fire, explosion or releases of hazardous constituents. The Department believes that the Respondents' commingling of incompatible hazardous wastes resulted in the fire in the Oxidizer Bay.

1.6.6. On February 28, 2001 and March 1, 2001, the Department conducted a Compliance Evaluation Inspection at the Facility. During the inspection, the Department observed numerous violations of the HWCL, including the same violations cited in the September 2000 Stipulation and Order.

1.6.7. On March 1, 2001, the Department and the San Bernardino County Sheriff's Department Bomb/Arson Detail discovered additional potentially unstable explosive wastes, including bulging containers of pentaerythritol tetranitrate (PETN) and partially dehydrated containers of initiating explosives, stored in unauthorized areas of the Facility.

1.6.8. On March 9, 2001, the Department issued an Imminent

and Substantial Endangerment Order (March 2001 Order) to Denova, based on serious and repeat violations of the HWCL occurring at the Facility. (A copy of the March 2001 Order is attached as Exhibit 3.) In the March 2001 Order, the Department determined that the conditions at the Facility may pose an imminent and substantial endangerment to the public health or safety or the environment, and the Department directed Denova to correct the violations immediately.

1.6.9. On March 22, 2001; April 3, 2001; June 6-7, 2001; July 9, 2001; July 27, 2001; July 31, 2001; August 1, 2001; and August 6-9, 2001 the Department conducted follow-up inspections or other visits at the Facility. During these inspections and visits, the Department observed numerous serious and repeat violations of the HWCL, including violations cited in the March 2001 Order.

## **II. REVOCATION ORDER**

### **A. Statutory Grounds for Revocation.**

2.1.1. Section 25186(a) of the Health and Safety Code authorizes the Department to deny, suspend or revoke any permit, registration, or certificate applied for, or issued, pursuant to the HWCL when the Department determines that the applicant or holder of the permit has violated or failed to comply with provisions of the Health and Safety Code or any permit, rule, regulation, standard, or requirement issued or adopted pursuant

thereto, if the violations or noncompliance shows a repeating or recurring pattern or may pose a threat to public health or safety or the environment.

2.1.2. The Department may also revoke a permit based on violation of an order issued by the Department. Health and Safety Code section 25186(c).

2.1.3. In addition, the Department may revoke a permit based on misrepresentation or omission of a significant fact or required information in the application for the permit. Health and Safety Code, section 25186(d).

**B. Statement of Facts Supporting Revocation.** The Department alleges the following facts in support of revocation of the Denova's interim status authorization showing that Respondents engaged in: a) violations showing repeating or recurring pattern of noncompliance; b) violations that may pose a threat to public health or safety or the environment; c) violations of the Department's orders; and d) misrepresentations and omissions in the Respondent's permit application.

2.2. **Violations Showing Repeating or Recurring Pattern.** Respondents have engaged in HWCL violations showing a repeating or recurring pattern, as follows:

2.2.1. **Storage of Hazardous Wastes in Excess of Authorized Capacity.** Respondents have repeatedly violated Health and Safety Code, section 25200.5, in that Respondents stored hazardous waste

in excess of the authorized design storage capacity for the Facility of 26,500 gallons. Based on the Facility's operating records or on inventories conducted by the Department, Respondents exceeded the authorized capacity on or about at least the following dates:

Date	Amount of Hazardous Waste Stored (in gallons)	
	Operating Record data	Inventories by Department
4/1/99 - 5/3/99	26,859-44,877 gallons	
4/22/99		55,188
5/10/99	26,564	
5/12/99	26,539	
5/21/99	26,544	
6/3/99	32,871	
6/14/99	26,510	
9/6-9/9/00	27,829-28,941	
9/11-14/00	27,755-30,946	
9/21/00	27,671	
10/1-3/00	31,852-33,237	
10/8-9/00	28,449-29,509	
12/3-9/00	30,115-36,810	
12/14-20/00	38,161-41,407	
1/23/01	41,000	
1/29/01	70,000+	
2/7/01		73,993
2/16/01	at least 32,808	
2/28/01-3/1/01		75,395
3/22/01		54,690
3/23/01	55,580	

3/30/01	55,580	
4/3/01		ca. 50,000
4/25/01	48,613	
4/30/01	48,613	
6/6/01	37,354	

#### 2.2.2. Failure to Minimize Fire, Explosion, or Releases.

Respondent repeatedly violated California Code of Regulations, t22, section 66265.31, in that on numerous occasions, Respondents failed to maintain or operate the facility to minimize the possibility of a fire, explosion or release of hazardous waste or hazardous constituents, as follows:

2.2.2.1. On or about April 22, 1999, Respondents stored at the Facility: a) at least four bulging drums of hazardous waste; b) two bulging drums of hazardous waste that were warm to the touch; and c) one drum of aluminum powder, an ignitable and reactive waste, that had emitted vapors. A bulging drum indicates that the contents of the drum have generated heat and/or gasses, and that the drum is under very high pressure and is liable to burst and release its contents.

2.2.2.2. On or about February 7, 2001, Respondents had stored together in the "unpacking trailer" at the Facility: a) at least twelve 5-gallon containers of hazardous waste consisting of wipes contaminated with unstable explosives, lead styphnate and lead azide; b) one severely corroded 55-gallon drum of hazardous



waste contaminated with lead azide; and c) other containers of explosive hazardous waste. Respondents also stored four containers of hazardous waste containing wipes contaminated with lead styphnate and lead azide in the explosives magazine bunkers.

2.2.2.3. Lead styphnate and lead azide are initiating explosives. If these chemicals are allowed to dehydrate, they become highly unstable and extremely shock sensitive. On February 8 and 9, 2001, the containers of lead styphnate and lead azide, referenced in paragraph 2.2.2.2., were detonated at the Facility by the FBI and San Bernardino County Sheriff's Department Bomb/Arson Detail, because the determination was made that these wastes were too unstable to be transported safely from the Facility.

2.2.2.4. On or about February 7, 2001, Respondents stored on the Recyclable Materials Pad at the Facility an unlabeled bulging 55-gallon poly drum containing hazardous waste with a pH of 12.

2.2.2.5. On or about February 16, 2001, Respondents stored in the Oxidizer Bay at the Facility two bulging drums of hazardous waste containing peroxides.

2.2.2.6. On or about February 28, 2001, Respondents stored together in explosive magazine #7 at the Facility: a) 37 boxes (1685 pounds) of high explosive hazardous waste; b) approximately 2,000 pounds of PETN, a high explosive.

2.2.2.7. On or about February 28, 2001, Respondents stored in magazine #7 at the Facility four bulging drums containing PETN a high explosive hazardous waste. The bulging drums indicate that the PETN was unstable, and could detonate and initiate the other explosive material, causing fire, explosion, and release of hazardous waste constituents into the environment.

2.2.2.8. On or about February 28, 2001, Respondents stored in magazines #9 and #11 at the Facility five 1-pound bottles of explosive hazardous waste consisting of dehydrated tetrazine, lead styphnate, and lead azide, which are initiating explosives. Inadequately hydrated initiating explosives are highly shock and friction sensitive and may detonate, resulting in fire or explosion and release of hazardous constituents into the environment. The bottles of unstable explosives were deemed to be too unstable to transport safely from the Facility. The Federal Bureau of Alcohol, Tobacco and Firearms (ATF) and the San Bernardino County Sheriff's Department Bomb/Arson Detail detonated the materials on June 14, 2001.

2.2.2.9. Respondents stored at the Facility roll-off bins containing hazardous waste that were damaged and/or leaking liquids directly onto the unpaved soil at the Facility. Liquids containing hazardous constituents had been and were being released from the bins directly onto the unpaved soil at the Facility on at least the following dates: On or about January

23, and February 6-9, 2001, at least three bins; February 28, 2001, and March 1, 2001, at least three bins; March 22, 2001, at least two bins; and April 3, 2001, at least one bin.

2.2.2.10. On or about March 22, 2001, and April 3, 2001, Respondents failed to cleanup releases of hazardous waste and/or hazardous waste constituents on the Recyclable Materials Pad, the RCRA Pad, and the Non-RCRA Pad at the Facility. Respondents allowed vehicles to drive through the releases, and the vehicle tires became contaminated and spread the contamination to the unpaved soil at the Facility.

2.2.2.11. The March 2001 Order required Denova to submit a work plan for the management and disposal of unstable explosive hazardous waste found as a result of inspections conducted on January 23, 2001, February 7 & 8, 2001, and March 1, 2001. The materials, seven bottles of explosives including tetrazine, lead styphnate, and lead azide, were deemed too unstable to transport on public roads. The work plan submitted by Respondents was inadequate for managing the explosive materials in a safe and timely manner. The Department then requested the assistance of USEPA to provide oversight of the destruction of the explosive materials. The Federal Bureau of Alcohol, Tobacco and Firearms and the County of San Bernardino Sheriff's Department detonated the materials on June 14, 2001.

2.2.2.12. On or about July 31, 2001, Respondents stored

hazardous waste in containers that were bulging and releasing their contents to the atmosphere. Respondents stored at least 80 55-gallon drums and one 250-gallon tote of hazardous waste under conditions that caused extreme pressure build-up in the drums. As a result, hazardous waste components were released to the atmosphere; the containers were at a high risk of bursting; and the container bottoms were rounded, rendering the containers unstable and at a high risk of falling over. If a container under pressure falls over, the impact increases the likelihood that the container will either burst or blow off its bung, and release its contents.

2.2.2.13. On or about August 6, 2001, Respondents stored hazardous waste in a bulging drum containing corrosive liquids. A bulging drum indicates that the contents of the drum have generated heat and/or gasses, and that the drum is under very high pressure and is liable to burst and release its contents.

2.2.3. **Operating Record Violations.** Respondents have repeatedly violated California Code of Regulations, t22, section 66265.73(b), in that Respondents failed to maintain the required information in the operating records at the Facility, including a description of hazardous waste received, the methods and dates of storage or transfer of each hazardous waste, and the location of each hazardous waste within the Facility and quantity at each location, as follows:

2.2.3.1. Respondents failed to record accurately the dates that hazardous waste was received or shipped from the Facility on or about the following dates:

a) On or about April 22-23, 1999, Respondent failed to record the manifest numbers for hazardous waste shipments transferred offsite, and Respondents failed to accurately record incoming or outgoing shipments in the operating records on at least 15 shipments.

b) On or about July 24-29, 1999, Respondents failed to record the manifest numbers for at least 25 manifested loads of waste transferred off-site.

c) On or about January 23, February 6-8, 2001, Respondent failed to accurately record in the operating records hazardous waste stored on the Recyclables Materials Pad, the QA Pad, RCRA Pad, non-RCRA Pad, and truck trailers at the Facility.

d) On or about February 15, 2001, Respondents failed to record the type and quantity of solid oxidizers and organics which were commingled and consolidated near the Oxidizer Bay. As a result of commingling these wastes, a fire occurred in the Oxidizer Bay on February 16, 2001.

e) On or about February 16, 2001, Respondents' operating record misidentified the contents of two containers of hazardous waste, and listed as being on site hazardous wastes that had been shipped off site.

f) On or about February 28, 2001, Respondent failed to accurately record in the operating records hazardous waste stored at Facility, including approximately 3000 lbs. of waste explosives.

g) On or about April 3, 2001, Respondents sent away from the Facility at least two manifested loads of hazardous waste for which the manifests did not describe accurately the contents of the waste. A load in which RCRA wastes were combined was described as "non-RCRA", and a load of corrosive liquids was manifested away as waste flammable liquids (manifest number 99671390).

2.2.3.2. Respondents failed to place bar codes or hazardous waste labels on containers of hazardous waste at the Facility on or about the following dates:

- a) April 22-23, 1999 - one container
- b) July 28-29, 1999 - 15 containers;
- c) February 7, 2001 - 13 containers;
- d) February 16, 2001 - at least 100 containers;
- e) February 28, 2001 - at least 338 containers;
- f) March 22, 2001 - approximately 200-300 containers;
- g) April 3, 2001 - at least one container

2.2.3.3. On or about April 3, 2001, and July, 9, 2001, Respondents did not maintain adequate operating records to enable the Respondents to track incoming and outgoing shipments of

hazardous wastes at the Facility, and for wastes consolidated at the Facility, specifically:

a) One load of two roll-off bins shipped off-site on April 4, 2001, Respondents could not provide records that showed where most of the waste came from and could only provide the incoming manifests for a small portion of the waste that made up the load.

b) One load of two roll-off bins shipped off-site on April 9, 2001, Respondents could not provide records that showed where most of the waste came from and could not provide incoming manifests for the wastes that made up the load.

c) One load shipped off-site on June 5, 2001, for which Respondents could not provide all of the incoming manifests and waste profiles that were consolidated into the load.

#### 2.2.4. **Storage of Wastes in Unauthorized Locations.**

Respondents have repeatedly violated Health and Safety Code, section 25200.5, in that Respondents have stored hazardous waste in unauthorized areas of the Facility, on or about the following dates:

a) April 22-23, 1999 - at least six locations at the facility.

b) April 30-May 3, 1999 - in one or more truck trailers at the facility.

c) July 28-29, 1999 - 17 containers in at least two

areas at the Facility

d) January 23, 2001, to present - the RCRA pad.

e) January 23 to March 1, 2001 - in the explosive magazine bunker complex.

f) January 23, 2001 to April 3, 2001 - on the Recyclable materials pad, the QA pad, the non-RCRA pad, and in roll off bins.

g) January 23, 2001, - two truck trailers.

h) February 6-9, 2001,- in roll-off bins, a shed, and in two truck trailers.

i) March 22, 2001 - in two truck trailers and the equipment supply/ sample storage shed.

j) July 31-August 9, 2001,- in a truck trailer, a loading dock, and on the QA/QC pad.

#### 2.2.5. Incompatibles Stored Without Separation.

Respondents repeatedly violated California Code of Regulations, t22, section 66265.177(c) and 66265.31, in that Respondents stored incompatible wastes together without any means of separation, as follows:

2.2.5.1. On or about January 23, 2001, Respondents stored drums of acids, bases, oxidizers, and flammables adjacent to and on top of each other without any means of separation on the Recyclable Materials Pad.

2.2.5.2. On or about February 6-8, 2001, Respondents stored



at the QA pad and the Recyclable Material pad of the Facility, incompatible hazardous waste including drums of acids, bases, flammables, oxidizers, reactives and toxics together without any means of separation.

2.2.5.3. On or about February 28, 2001, Respondents stored at the QA pad and the Recyclable Material pad of the Facility acids and bases, and oxidizers and organic solvents together without any means of separation.

2.2.5.4. On or about March 22, 2001, Respondents stored in four separate areas of the Facility oxidizing and flammable wastes together without any means of separation.

2.2.5.5. On or about April 3, 2001, Respondents stored at intermodal trailer #8 of the Facility oxidizing and flammable wastes together without any means of separation.

2.2.5.6. On or about July 23, 2001, Respondents stored incompatible hazardous waste at the Facility without any means of separation in that, from about July 23, 2001 until about August 1, 2001, Respondent stored at least 64 drums of incompatible corrosive wastes (strong acids and strong bases, strong oxidizers and flammable organic wastes) together in a truck trailer, and from about August 1, 2001, until at least August 9, 2001, Respondent stored at least 80 drums of the same incompatible wastes together with out adequate separation on the QA pad.

2.2.6. **Open Containers.** Respondents violated California

Code of Regulations, t22, section 66265.173(a) in that Respondents failed to keep containers of hazardous waste closed, except when adding or removing wastes, on or about the following dates:

- a) April 22-23, 1999 - at least six containers;
- b) July 28-29, 1999 - at least one container;
- c) February 28, 2001 - at least 50 containers;
- d) March 22, 2001 - at least 4 containers;
- e) April 3, 2001 - at least 4 containers.

2.2.7. **Storage in Leaking Containers.** Respondents repeatedly violated California Code of Regulations, t22, section 66265.171 and 66265.31, in that Respondents stored hazardous waste in containers that were not in good condition on or about the following dates:

- a) January 23, 2001 - several cubic yard boxes of automotive products at the Recyclable Materials pad were leaking.
- b) February 6-9, 2001 -stored several roll-off bins at the QA pad and the Recyclable Materials pad that were damaged and leaking.
- c) February 28 and March 1, 2001 - several cubic yard boxes saturated with water; four bulging drums containing PETN; three roll-off bins damaged and/or leaking; and at least 14 other containers not in good condition.
- e) March 22, 2001 - at least four containers and one

roll-off bin were damaged and leaking

f) April 3, 2001 - one leaking roll-off bin.

g) July 31, 2001 - containers were bulging and releasing their contents to the atmosphere in a truck trailer and on the loading dock.

2.2.8. **Storage of Hazardous Waste Over One Year.**

Respondents have repeatedly violated Section II.1(a) of the ISD, in that Respondents have stored hazardous waste at the Facility for longer than one year, on or about the following dates:

a) July 28, 1999 - at least 2 containers;

b) January 23, 2001, at least seven manifested loads of hazardous waste;

c) February 28, 2001 - at least 204 containers;

d) March 22, 2001 - at least one container;

e) April 3, 2001 - at least ten manifested loads of hazardous waste.

2.2.9. **Failure to Comply with Regulatory Agency Financial Obligations.** Respondents have repeatedly failed to comply with State and Federal regulatory agency financial obligations and/or requirements.

2.2.9.1. **Failure To Pay Facility Fees.** Respondents have failed to make four required payments of facility fees for the years 2000 and 2001 pursuant to Health and Safety Code, section 25205.1(I). Respondents currently owe over \$38,000.

2.2.9.2. **Failure to Establish Closure Funding.** Respondents violated California Code of Regulations, t22, section 66265.143(b)(3) in that Respondents failed, since transfer of Interim Status was approved by the Department in May, 2000, to establish a standby trust fund as part of the Facility's closure funding mechanism.

2.2.9.3. **Failure To Maintain Financial Responsibility.** Respondents violated California Code of Regulations, t22, section 66265.147 in that, since transfer of Interim Status was approved by the Department in May, 2000, Respondents failed to obtain adequate third party liability insurance. The policy that Respondents established failed to meet the regulatory requirements for numerous reasons. Since April 1, 2001, Respondents have allowed the liability insurance policy to lapse.

2.2.9.4. **Failure to Comply with USEPA Order:**

2.2.9.4.1. **Background** On or before September 24, 1999, Denova and others transported about 180,000 pounds of hazardous chemicals, including hazardous waste, from the Chemical Commodities Agency in Highland, California, and stored them in a Brownsville, Texas, warehouse. The Texas Natural Resource Conservation Commission (TNRCC) inspected the warehouse and found waste code violations. Denova's efforts to correct the violations failed to comply with the TNRCC's order. On September 23, 1999, the TNRCC requested assistance from the USEPA to deal

with the chemicals as stored at the warehouse. Denova initially conducted the removal with oversight provided by USEPA, but was relieved of onsite responsibilities on September 30, 1999, based on the USEPA's

observations of unsafe work, unsound categorization and packaging, and inadequate performance in quickly and effectively stabilizing a situation that posed an imminent and substantial endangerment to persons and property (see Pollution Report No.: 07 published by USEPA October 26, 1999).

2.2.9.4.2. **USEPA Order** On or about July 21, 2000, Denova entered into an Administrative Order on Consent for Removal Action (Order on Consent) with the USEPA for the removal of certain hazardous wastes from the site in Brownsville, Texas. The Order on Consent required that Denova pay USEPA \$325,658.51 for response costs. To date, Denova has failed to pay any of this amount.

2.2.9.5. **Failure to Pay Penalties for September 2000 Order:** Respondents violated paragraphs 8.1, 8.2, and 8.6 of the Stipulation and Order, in that Respondents did not pay \$26,664 in penalties, in four installments of \$6,666.67, to the Department. Respondents also violated paragraph 8.3 of the Stipulation and Order, in that Respondents did not pay a penalty of \$5,000 within 30 days after failing to submit the Certificate referenced in

paragraph 2.4.1.2.

2.3. **Violations That May Pose a Threat to Public Health or Safety or the Environment.** Respondents engaged in violations that may pose a threat to public health or safety or the environment, as follows:

2.3.1. **Storage in Excess of Capacity.** As stated in paragraph 2.2.1., the Respondents repeatedly violated Health and Safety Code, 25200.5, in that Respondents stored hazardous waste in excess of the authorized design storage capacity for the Facility on numerous occasions. Exceeding authorized storage capacity may result in the Respondents being unable to properly manage, handle, and track the excessive amounts of hazardous waste, which may result, in turn, in fires, explosions, and or releases of hazardous substances or hazardous constituents.

2.3.2. **Commingling Incompatibles** Respondents violated California Code of Regulations, t22, section 66265.17(b)(1), 66265.177(a) and 66265.31, in that on or about February 15, 2001, Respondents commingled incompatible hazardous wastes, including oxidizers, unknown organic chemicals, and chemicals, such as potassium permanganate and ammonium nitrate, that are known to react when mixed, in or near the Oxidizer Bay at the Facility. Respondents' commingling of incompatible hazardous wastes resulted in a fire at the Facility on or about February 16, 2001, releasing hazardous constituents and presenting the potential for

a larger conflagration at the Facility.

2.3.3. **Failure to Minimize Fire, Explosion, or Releases.** As stated in paragraph 2.2.2. above, Respondents repeatedly violated California Code of Regulations, t22, section 66265.31, in that on numerous occasions, Respondents failed to maintain or operate the facility to minimize the possibility of a fire, explosion or release of hazardous waste or hazardous constituents.

2.3.4. **Inadequate Operating Records.** As stated in paragraph 2.2.3. above, Respondents repeatedly violated California Code of Regulations, t22, section 66265.73(b), in that on numerous occasions Respondents failed to maintain adequate operating records at the Facility. Failure to adequately record information concerning the hazardous waste handled at the Facility may result in the Respondents being unable to track the location and type of hazardous waste at the Facility, and thus an inability to respond properly in an emergency situation at the Facility or at an offsite location. In addition, the failure to properly label and record information on hazardous waste may result in wastes being managed improperly, e.g., storing or commingling incompatible wastes, or transporting wastes to unauthorized locations for treatment, storage or disposal.

2.3.5. **False Statements/Misrepresentations.** The Respondents violated Health and Safety Code, section 25189.2, in that Respondents made false statements on manifest documents used for

the purposes of compliance with the Hazardous Waste Control Act, to wit:

2.3.5.1. Respondents completed a manifest, number 20041080, dated May 26, 2000, on which a waste was described as a non-RCRA waste; the waste was described in the operating record as a D001 RCRA waste.

2.3.5.2. Respondents completed a manifest, number 20746424, dated March 21, 2001, on which a waste was described as a non-RCRA waste. The waste was subsequently sampled by the Department and found to be a RCRA waste containing high levels of chromium.

2.3.5.3. On or about April 3, 2001, Respondents sent away from the Facility at least two manifested loads of hazardous waste for which the manifests did not describe accurately the contents of the waste. A load in which RCRA wastes were combined was described as "non-RCRA", and a load of corrosive liquids was manifested away as waste flammable liquids.

2.3.5.4. Misidentifying hazardous wastes on manifests may result in the wastes being accepted by facilities that are not designed or operated to manage such wastes, posing a threat of fire, explosion, or releases.

2.3.6. **Storage in Unauthorized Areas.** As stated in paragraph 2.2.4. above, Respondents repeatedly violated Health and Safety Code, section 25200.5(b), in that on numerous occasions Respondents stored hazardous wastes in unauthorized



locations at the Facility, including QA Pad, RCRA Pad, Non-RCRA Pad, the runway, tractor trailers, roll-off bins, and explosive magazines. Storing hazardous waste in unauthorized locations may result in hazardous wastes being stored without adequate containment, without adequate safety and decontamination equipment, and without adequate inspection.

2.3.7. **Inadequate Waste Analysis:** Respondents failed to obtain detailed chemical or physical analyses of representative samples of hazardous wastes accepted, consolidated, and transported off-site. Failure to obtain detailed chemical and physical analyses of hazardous wastes may result in commingling of incompatible wastes and storing incompatible wastes without separation, which may cause reactions, fires, explosions or releases of hazardous constituents. Inadequate waste analysis may also result in inaccurate labeling and manifesting, and/or transporting wastes to unauthorized points, which may cause an inability to respond properly in an emergency situation at the Facility or at an offsite location.

2.3.7.1 On or about February 7, 16 and 28, 2001, the Department determined that the Respondents failed to obtain detailed chemical and physical analyses of representative samples of the wide range of wastes that Respondents accepted at the Facility.

2.3.7.2. On or about July 23, 2001, Respondents accepted

and stored, at the Facility, a truck load of hazardous waste and failed to obtain a detailed chemical and physical analysis of the wastes. The wastes were in 80 55-gallon drums and one 250 gallon tote. Subsequent investigation by the Department determined that the hazardous wastes in the load included incompatible corrosive wastes and that they had been mis-labeled by the generator.

2.3.8. **Incompatibles Storage Without Separation.** As stated in paragraph 2.2.5. above, Respondents repeatedly violated California Code of Regulations, t22, section 66265.177(c) and 66265.31, in that Respondents stored incompatible wastes together without any means of separation. Storage of incompatible wastes together without separation may result in incompatible wastes commingling and reacting causing fires, explosions, or the release of hazardous constituents.

2.3.9. **Failure to Train Facility Employees.** Respondents violated California Code of Regulations, t22, section 66265.16 in that Respondents failed to provide adequate training to Facility employees and failed to maintain require records of employee training, in that:

2.3.9.1. On or about February 20, 2001, Respondents had no training records for employees.

2.3.9.2. On or about June 6-7, 2001, Respondents failed to have an adequate employee training program; Respondent had no records that demonstrated an organized on-site training program,

for at least four workers.

2.3.9.3. On or about August 6-9,2001, Respondents failed to provide training in emergency response to at least three employees, and failed to have training records for at least three employees.

2.3.10. **Open Containers.** As stated in paragraph 2.2.6. above, Respondents repeatedly violated California Code of Regulations, t22, section 66265.173(a) in that on numerous occasions Respondents failed to keep containers of hazardous waste closed except when adding or removing wastes. Failure to keep containers closed may result in hazardous waste being released through spillage or the release of fumes or volatile constituents.

2.3.11. **Storage For More Than One Year.** As stated in paragraph 2.2.8. above, Respondents repeatedly violated ISD Section II.1(a) in that on numerous occasions Respondents stored hazardous waste on site longer than one year. Storage of hazardous waste longer than one year may result in the containers deteriorating and releasing hazardous waste or hazardous constituents. In addition, some explosive wastes may deteriorate and become unstable.

2.3.12. **Storage In Leaking Containers.** As stated in paragraph 2.2.7. above, Respondents repeatedly violated California Code of Regulations, t22, section 66265.171 and

66265.31, in that on numerous occasions Respondents stored hazardous waste in containers that were not in good condition. Storage of hazardous wastes in containers that are not in good condition may result in containers leaking and releasing hazardous waste or hazardous constituents.

2.3.13. **Inadequate Aisle Space.** Respondents violated California Code of Regulations, t22, section 66265.35, in that on or about April 23, 1999, and February 28, 2001, Respondents stored hazardous waste at the Facility without adequate aisle space. Failure to have adequate aisle space may result in Denova, in the event of an emergency situation, not being able to quickly and adequately respond to fires, explosions or releases.

2.3.14. **Inadequate Emergency Equipment.** Respondents violated California Code of Regulations, t22, section 66265.33, in that on or about March 1, 2001, Respondents failed to assure the proper operation of decontamination equipment in the event of an emergency, to wit, the water supply was turned off to the eyewash/emergency shower at the Facility. Failure to maintain an eyewash/emergency shower may result in personnel being unable to wash out chemicals splashed in their eyes, and may cause serious injury, blindness, or death.

2.3.15. **Failure to Amend Contingency Plan.** Respondents violated California Code of Regulations, t22, section 66265.52(d) and 66265.54(d), in that on or about February 16, 2001,

Respondents failed to update the facility contingency plan more than four months after the listed emergency coordinators were no longer employed by Denova. In the event of an emergency, failure to amend the contingency plan may result in responding agencies and facility personnel being delayed in locating the person with the knowledge and authority to deal with the emergency.

2.3.16. **Inadequate Labeling.** Respondents violated California Code of Regulations, t22, section 66262.32(b), in that on or about January 23-24, 2001, and February 6 and 9, 2001, Respondents failed to mark the manifest document number on containers of hazardous waste that were offered for transportation. In the event of an emergency during transportation of hazardous wastes, failure to mark the manifest number on a container may result in those responding to the emergency being unable to quickly determine the contents of the containers and take appropriate actions to abate the emergency situation.

2.3.17. **Failure To Close Open Burn/Open Detonation Unit (OB/OD Unit).** Denova was required, by California Code of Regulations, t22, section 66265.113, to complete closure activities at the OB/OD unit pursuant to the approved Closure Plan on or before December 23, 2000. The Closure Plan required soil sampling for explosive chemicals and semi-volatile organic compounds and clean up of contaminated soil. Pursuant to 22 CCR

66265.115, Respondents were required to submit the Closure Certification Report by February 23, 2001. To date, Respondents have not completed the required sampling and cleanup nor submitted the Closure Certification Report. Failure to properly close a hazardous waste management unit may result in contamination of soil and exposure of near-by populations to hazardous waste constituents.

2.3.18. **Combination of Violations.** Respondents engaged in numerous violations concurrently of the HWCL, as described in paragraphs and 2.2.1. to 2.2.9. and 2.3.1. to 2.3.17., above, that in combination greatly increase the potential threat to human health and the environment. For example:

2.3.18.1. Respondents stored at the Facility, in unauthorized locations for excessive amounts of time, unstable explosive wastes for which Respondents failed to maintain records and which Respondent have stored in unlabeled containers. In some cases, the shock-sensitive explosives were stored with large amounts of other high explosives.

2.3.18.2. Because the waste initiating explosive had not been listed in the Facility operating record, Respondents could not identify the explosive, did not know that it was stored at the Facility, and failed to do the necessary inspection and maintenance of the explosive. As a result, some of this explosive had become dehydrated, which makes it extremely

sensitive to shock.

2.3.18.3. Because these same shock sensitive explosives were unlabeled, the likelihood was increased that the explosives could be opened or otherwise mishandled, causing an explosion that could have detonated the other near-by high explosives.

2.3.18.4. The unstable explosives were deemed too unstable to transport on public roads. The Federal Bureau of Alcohol, Tobacco and Firearms and the County of San Bernardino Sheriff's Department oversaw the destruction by detonation of the materials on June 14, 2001.

2.3.18.5. On numerous occasions, Respondents stored hazardous waste in open and in leaking or damaged containers, and Respondents stored incompatible hazardous wastes together without adequate separation. In some cases, Respondents stored incompatible wastes together in damaged containers, which act greatly increases the likelihood that the incompatible wastes can mix and react, causing fire, explosion, or releases of hazardous waste constituents.

2.3.18.6. From on or before January 23, 2001, through August 9, 2001, Respondents failed to obtain detailed chemical and physical analyses of the wastes accepted and stored at, and transported from, the Facility. Respondents stored these unidentified wastes in excessive amounts, in damaged containers, and in unauthorized locations without regard to the chemical

incompatibility of the wastes. These violations in combination greatly increase the likelihood that incompatible wastes can mix and react, causing fire, explosion, or releases of hazardous waste constituents.

2.3.18.7. The Respondents' conduct referenced in paragraphs 2.2. through 2.3.17. above violated numerous HWCL requirements, and these violations when combined together posed a more significant threat to the public health or safety or the environment, than the threat posed by the violations individually.

**2.4. Violations of Enforcement Orders Issued by the Department.** Respondents has engaged in violations of orders issued by the Department, as follows:

2.4.1. **Violations of the Stipulation and Order.** Respondents violated the provisions of the Stipulation and Order between the Department and Denova, dated September 22, 2000, in that:

2.4.1.1. Respondents violated paragraph 7.2 of the Stipulation and Order in that on numerous occasions, Respondents engaged in violations which the Schedule for Compliance referenced in the Stipulation and Order required Denova to correct, including a) storing hazardous waste over the authorized capacity of 26,500 gallons (see paragraph 2.2.1. for discussion of violation); b) failure to maintain the facility to prevent releases and fires (see paragraph 2.2.2); c) failure to maintain



adequate operating records (see paragraph 2.2.3); d) storage in unauthorized locations (see paragraph 2.3.4.); e) failure to maintain adequate aisle space (see paragraph 3.2.10.); f) storing hazardous waste in open containers (see paragraph 2.2.6.); g) storage of waste over one year (see paragraph 2.2.8.); and h) failure to properly label containers (see paragraph 3.2.14.).

2.4.1.2. **Failure to Attend Compliance School.** Respondents violated paragraph 7.2 of the Stipulation and Order, in that Respondents failed to send employees to the California Compliance School and to submit a Certificate of Satisfactory Completion to the Department with 185 days of the effective date of the Stipulation.

2.4.1.3. **Failure to Pay Penalties.** Respondents violated paragraphs 8.1, 8.2, and 8.6 of the Stipulation and Order, in that Respondents did not pay \$26,664 in penalties to the Department. Respondents also violated paragraph 8.3 of the Stipulation and Order, in that Respondents did not pay a penalty of \$5,000 within 30 days after failing to submit the Certificate referenced in paragraph 2.4.1.2.

2.4.2. **Violations of the Imminent and Substantial Endangerment Order.** Respondents violated the requirements of the Imminent and Substantial Endangerment Order (March 2001 Order) issued by the Department on March 9, 2001, as follows:

2.4.2.1. **The March 2001 Order.** The Schedule for Compliance

in Section 4. of the March 2001 Order required Denova to correct the violations cited in the Order. The March 2001 Order was in effect immediately upon issuance.

2.4.2.2. **Violations of Schedule for Compliance.** Respondents violated the SCHEDULE FOR COMPLIANCE of the March 2001 Order in that Respondents continued to engage in violations that were required to be corrected under the March 2001 Order, as follows:

- a) storage in excess of capacity (see paragraph 2.2.1. for discussion of violation);
- b) failure to maintain the facility to prevent releases and fires (see paragraph 2.2.2.);
- c) failure to maintain adequate operating records (see paragraph 2.2.3.);
- d) storage in unauthorized locations (see paragraph 2.2.4.);
- e) storage of incompatible wastes without adequate separation (see paragraph 2.2.5.)
- f) open containers (see paragraph 2.2.6.); and
- g) storage of waste over one year (see paragraph 2.2.8.).

2.4.2.3. Respondents violated paragraph 4.7 of the March 2001 Order, in that Respondents failed to submit a **complete** inventory and **an adequate** work plan for the removal and disposal of explosive wastes in accordance with the schedule specified in

the I&SE Order.

**2.5. Misrepresentations or Omissions in Permit Application.**

Respondents have made several misrepresentations or omissions of significant information in the Denova's hazardous waste permit application submitted to the Department.

2.5.1. **Omission of Landowner's Names:** In the Denova's Part A Permit Application dated August 2, 1999, Respondents omitted to state at the time of submission, that the actual landowners of the Facility were the Robert V. Cole Family Trust (undivided half interest) and Gene S. Van Houten and Eileen M. Van Houten (undivided half interest).

2.5.2. **Omission of Documentation of Compliance:** In Denova's Part B Permit Application dated August 2000, Respondents failed to include the following significant and required information: a) documentation of compliance with, or justification for exemption from, air monitoring requirements; and b) certain information required for compliance with the California Environmental Quality Act. The Department has issued Denova two Notices of Deficiency (NOD) for failure to submit an administratively complete Part B Permit Application.

**2.6. Misrepresentation in Information Reported to the Department:** Respondents have made misrepresentations on documents reported to the Department, as follows:

2.6.1. **False Statements in Operating Records.** On or about

January 23, and February 6-8, 2001, the Department determined that, on numerous occasions, Respondents made false statements in the Facility operating records regarding the amount of hazardous waste stored at the Facility, including, but not limited to, the following dates:

Date	Amount recorded in operating record (gallons)	Actual amount (gallons)
December 4, 2000	4,551	30,195
December 5, 2000	5,051	36,810
December 6, 2000	19,876	35,935
December 7, 2000	19,931	36,810
December 8, 2000	22,857	36,431

2.6.2. **False Statements on Manifests:** Respondents have made false statements on manifests for hazardous wastes shipped off-site.

2.6.2.1. On or about January 23, and February 6-8, 2001, the Department determined that Respondents made false statements on manifests for shipments of RCRA hazardous waste transferred offsite as non-RCRA hazardous waste.

2.6.2.2. On or about August 6-8, 2001, Respondent made false statements on at least one manifest for a shipment of hazardous waste transferred off-site. The outgoing manifest stated that the waste was non-RCRA hazardous waste, and the waste had been received by Respondents as RCRA hazardous waste.

### **C. Revocation Determination**

2.7. The Department has determined that:

2.7.1. **Repeat and Recurring Violations.** The Respondents have engaged in the violations referenced in Section 2.2., and those violations show a repeat and recurring pattern of non-compliance by Respondents, including:

- a) repeatedly storing hazardous waste in excess of authorized capacity;
- b) repeatedly failing to maintain and operate the Facility in a manner that minimizes the possibility of releases, fires, or explosions;
- c) failure to obtain analyses of hazardous waste;
- d) failing to adequately record and track hazardous waste accepted and stored at the Facility;
- e) repeatedly storing waste in unauthorized locations;
- f) repeatedly failing to separate incompatible wastes;
- g) repeatedly failing to store hazardous waste in closed containers;
- h) repeatedly storing hazardous waste in leaking containers;
- I) repeatedly storing waste longer than one year at the Facility;
- j) continual and repeated failure to comply with regulatory agency financial obligations and requirements.

2.7.2. **Violations That May Pose A Threat.** The Respondents have engaged in the violations referenced in Section 2.3., and those violations may pose a threat to public health or safety or the environment, including:

- a) storing hazardous waste more than double the authorized capacity of the Facility;
  - b) commingling incompatible wastes;
  - c) failing to maintain the facility in a manner to prevent releases and fires;
  - d) failure to adequately record and track hazardous waste accepted and stored at the Facility;
  - e) storing waste in unauthorized locations;
  - f) failing to analyze hazardous wastes;
  - g) failing to separate incompatible wastes;
  - h) storing waste in open containers;
  - I) failing to maintain adequate aisle space;
  - j) storing waste over one year;
  - k) storing wastes in leaking containers;
  - l) failure to maintain emergency equipment;
  - m) failure to amend contingency plan;
  - n) failure to mark manifest document numbers on labels;
- and
- o) failure to close OB/OD unit.

2.7.3. **Violations of Orders.** The Respondents have engaged

in the numerous violations referenced in Section 2.4., and those violations constitute violations of the September 2000 Stipulation and Order and the March 2001 Order issued by the Department relating to the generation, transportation, treatment, storage, recycling, disposal or handling of hazardous wastes. As set forth in Section 2.5., Denova has violated an order issued by San Bernardino County.

2.7.4. **Misrepresentations or Omissions in Application.** As set forth in Section 2.6.2., the Respondents have engaged in misrepresentations or omissions of significant facts and/or required information in Denova's permit application submitted to the Department.

2.7.5. **Revocation Determination.** Based on the foregoing, the Department has determined that Denova's interim status authorization shall be revoked.

#### **D. REVOCATION ORDER**

2.8. The Department hereby issues this order:

a) Denova's Interim Status Authorization is revoked fifteen days from the date that this Revocation Order is served on Denova, unless Denova requests a hearing within the fifteen-day period;

b) Upon the effective date of this Order, Respondents shall cease accepting hazardous waste at the Facility;

c) Denova has submitted a Closure Plan and Closure Cost

Estimate for the Facility with Denova's Part B application. The Department is reviewing that Closure Plan and Closure Cost Estimate for adequacy.

d) Within 90 days after the Department's approval of a Closure Plan and Closure Cost Estimate, Respondents shall remove all hazardous waste from the Facility pursuant to the approved Closure Plan and California Code of Regulations, t22, section 66265.113(a);

e) Within 180 days after approval of the Closure Plan by the Department, Respondents shall complete final closure activities at the Facility pursuant to California Code of Regulations, t22, Section 66265.113(b);

f) Within 60 days after completion of closure activities at the Facility, Respondents shall submit a closure certification report to the Department pursuant to California Code of Regulations, t22, section 66265.115;

g) Respondents shall correct the violations referenced in Section 3.2 of this Order;

h) Respondents shall comply with the Schedule for Compliance of the Enforcement Order in Section V below;

I) Respondents shall submit monthly status reports summarizing closure activities at the Facility and documenting progress towards correcting the violations referenced in Sections 3.2.



### **III. ENFORCEMENT ORDER**

#### **A. Introduction.**

3.1.1. Paragraphs 1. to 1.6.9. inclusive are incorporated herein by reference.

3.1.2. The Department issues this Enforcement Order to Respondents.

3.1.3. On March 9, 2001, the Department issued an Imminent and Substantial Endangerment Order (March 2001 Order) to Denova. Denova filed a Notice of Defense on March 22, 2001. Subsequently, the Department and Denova entered into a Stipulation under which Denova waived the 90-Day hearing requirement in Health and Safety Code, section 25187(e).

3.1.4. The Department is, by this Enforcement Order with Imminent and Substantial Endangerment Determination, amending the March 2001 Order based on additional information.

3.1.5. Not all of the violations observed during the inspections and visits listed in Section I of this Order are cited herein, and the Department reserves the right to amend this Order to include additional violations.

#### **B. DETERMINATION OF VIOLATIONS**

3.2. The Department has determined that:

3.2.1. **Exceeding Storage Capacity.** The Respondents violated Health and Safety Code, section 25200.5(b), Section 7.1 of the September 2000 Stipulation and Order, and Section 4.1 of the

March 2001 Order in that on numerous occasions, Respondents exceeded the authorized design storage capacity for the Facility of 26,500 gallons of hazardous waste, to wit:

3.2.1.1. On February 6-9, 2001, the FBI (see paragraph 1.6.4.) obtained the Respondents' operating records. The Department reviewed the Respondents' operating records that showed the Respondents exceeded its authorized design storage capacity on at least the following dates: September 6 to 9, 2000; September 11 to 14, 2000; September 21, 2001; October 1, 2, and 3, 2000; October 8 and 9, 2000, December 3 to 9, 2000; and December 14 to 20, 2000.

3.2.1.2. On or about January 23, 2001, the Department obtained statements from Denova's employees showing that the Respondents stored 41,000 gallons of hazardous waste at the Facility during the week previous to January 23, 2001.

3.2.1.3. On February 16, 2001, Denova conducted a partial hazardous waste inventory at the Facility that showed the Respondents stored at least 32,808 gallons of hazardous waste at the Facility.

3.2.1.4. On or about February 28 and March 1, 2001, the Department conducted an inspection at the Facility and found that the amount of hazardous waste at the Facility was approximately 75,395 gallons.

3.2.1.5. On or about March 22, 2001, the Department

conducted an inspection at the Facility and found that the amount of hazardous waste at the Facility was approximately 54,690 gallons.

3.2.1.6. On or about April 3, 2001, the Department conducted an inspection at the Facility and found that the amount of hazardous waste at the Facility was approximately 50,000 gallons.

3.2.2. **Commingling Incompatibles.** The Respondents violated California Code of Regulations, t22, sections 66265.17(b)(1), 66265.177(a), and 66265.31, in that on or about February 15, 2001, Respondents commingled incompatible wastes and materials including oxidizers, unknown organic chemicals, and chemicals, such as potassium permanganate and ammonium nitrate, that are known to react when mixed, in or near the Oxidizer Bay at the Facility. Respondents' commingling of incompatible hazardous wastes resulted in a fire at the Facility on or about February 16, 2001, releasing hazardous constituents and presenting the potential for a larger conflagration at the Facility.

3.2.3. **Failure to Minimize Fire, Explosion, or Releases.** Respondents repeatedly violated California Code of Regulations, t22, section 66265.31, section 7.1 of the September 2000 Stipulation and Order, and Section 4.10. of the March 2001 Order in that on numerous occasions, Respondents failed to maintain or operate the facility to minimize the possibility of a fire,

explosion or release of hazardous waste or hazardous constituents, as follows:

3.2.3.1. On or about February 7, 2001, Respondents stored together in the "unpacking trailer" at the Facility: a) at least twelve 5-gallon containers of hazardous waste consisting of wipes contaminated with unstable explosives, lead styphnate and lead azide; b) one severely corroded 55-gallon drum of hazardous waste contaminated with lead azide; and c) other containers of explosive hazardous waste. Respondents also stored four containers of hazardous waste containing wipes contaminated with lead styphnate and lead azide in the explosives magazine bunkers.

3.2.3.1.1. Lead styphnate and lead azide are initiating explosives. If these chemicals are allowed to dehydrate, they become highly unstable and extremely shock sensitive. On February 8 and 9, 2001, the containers of lead styphnate and lead azide, referenced in paragraph 3.2.3.1., were detonated at the Facility by the FBI and San Bernardino County Sheriff's Department Bomb/Arson Detail, because the determination was made that these wastes were too unstable to be transported safely from the Facility.

3.2.3.2. On or about February 7, 2001, the Respondents stored on the Recyclable Materials Pad at the Facility a bulging 55-gallon poly drum containing hazardous waste with a pH of 12.

3.2.3.3. On or about February 16, 2001, the Respondents

stored in the Oxidizer Bay at the Facility two bulging drums of hazardous waste containing peroxides.

3.2.3.4. On or about February 28, 2001, Respondents stored together in explosive magazine #7 at the Facility: a) 37 boxes (1685 pounds) of high explosive hazardous waste; b) approximately 2,000 pounds of PETN, a high explosive, of which four of the 12 drums were bulging, indicating that the explosive was decomposing. The unstable, shock sensitive explosives could detonate and initiate explosions among the other high explosives, causing fire, explosion and release of hazardous constituents into the environment.

3.2.3.5. On or about February 28, 2001, Respondents stored in magazines #9 and #11 at the Facility five 1-pound bottles of explosive hazardous waste consisting of dehydrated tetrazine, lead styphnate, and lead azide, which are initiating explosives. Inadequately hydrated initiating explosives are highly shock and friction sensitive and may detonate, resulting in fire or explosion and release of hazardous constituents into the environment.

3.2.3.6. Respondents stored at the Facility roll-off bins containing hazardous waste that were damaged and/or leaking liquids directly onto the unpaved soil at the Facility. Liquids containing hazardous constituents had been and were being released from the bins directly onto the unpaved soil at the

Facility on at least the following dates: On or about January 23, and February 6-9, 2001, at least three bins; February 28, 2001, and March 1, 2001, at least three bins; March 22, 2001, at least two bins; and April 3, 2001, at least one bin.

3.2.3.7. On or about March 22, 2001, and April 3, 2001, Respondents failed to cleanup releases of hazardous waste and/or hazardous waste constituents on the Recyclable Materials Pad, the RCRA Pad, and the Non-RCRA Pad at the Facility. Respondents allowed vehicles to drive through the releases, and the vehicle tires became contaminated and spread the contamination to the unpaved soil at the Facility.

3.2.3.8. The March 2001 Order required Denova to submit a work plan for the management and disposal of unstable explosive hazardous waste found as a result of inspections conducted on January 23, 2001, February 7 & 8, 2001, and March 1, 2001. The materials, seven bottles of explosives including tetrazine, lead styphnate, and lead azide, were deemed too unstable to transport on public roads. The work plan submitted by Respondents was inadequate for managing the explosive materials in a safe and timely manner. The Department then requested the assistance of USEPA to provide oversight of the destruction of the explosive materials. The Federal Bureau of Alcohol, Tobacco and Firearms and the County of San Bernardino Sheriff's Department detonated the materials on June 14, 2001.

3.2.3.9. On or about July 31, 2001, Respondents stored hazardous waste in containers that were bulging and releasing their contents to the atmosphere. Respondents stored at least 80 55-gallon drums and one 250 gallon tote of hazardous waste under conditions that caused extreme pressure build-up in the drums. As a result, hazardous waste components were released to the atmosphere; the drums were at a high risk of bursting; and the container bottoms were rounded, rendering the drums unstable and at a high risk of falling over. If a container under pressure falls over, the impact increases the likelihood that the container will either burst or blow off its bung, and release its contents.

3.2.4. **Inadequate Waste Analysis.** The Respondents violated California Code of Regulations, t22, section 66265.13(a), and Section 4.8 of the March 2001 Order in that on or about February 7, 16 and 28, 2001, the Department determined that the Respondents failed to obtain detailed chemical and physical analyses of representative samples of the wide range of wastes Respondent accepted at the Facility.

3.2.4.1. Respondents completed a manifest, number 20746424, dated March 21, 2001, on which a waste was described as a non-RCRA waste. The waste was misidentified in that it contained high levels of chromium and was not a non-RCRA waste.

3.2.4.2. On or about July 23, 2001, Respondents accepted and

stored, at the Facility, a truck load of hazardous waste and failed to obtain a detailed chemical and physical analysis of the wastes. The wastes were in 80 55-gallon drums and one 250 gallon tote. Subsequent investigation by the Department determined that the hazardous wastes in the load included incompatible corrosive wastes (strong acids, strong bases, strong oxidizers, and flammable organic wastes) and that they had been mis-labeled by the generator.

3.2.5. **Incompatibles Stored Without Separation.** The Respondents violated California Code of Regulations, t22, section 66265.177(c) and 66265.31, and Section 4.4. of the March 2001 Order in that Respondents stored incompatible wastes together without any means of separation, to wit:

3.2.5.1. On or about January 23, 2001, Respondents stored drums of acids, bases, oxidizers, and flammables adjacent to and on top of each other without any means of separation on the Recyclable Materials Pad.

3.2.5.2. On or about February 6-8, 2001, Respondents stored at the QA pad and the Recyclable Material pad of the Facility, incompatible hazardous waste including drums of acids, bases, flammables, oxidizers, reactives and toxics together without any means of separation.

3.2.5.3. On or about February 28, 2001, Respondents stored at the QA pad and the Recyclable Material pad of the Facility



acids and bases, and oxidizers and organic solvents together without any means of separation.

3.2.5.4. On or about March 22, 2001, Respondents stored in four separate areas of the Facility oxidizing and flammable wastes together without any means of separation.

3.2.5.5. On or about April 3, 2001, Respondents stored at intermodal trailer #8 of the Facility oxidizing and flammable wastes together without any means of separation.

3.2.5.6. On or about July 23, 2001, Respondents stored incompatible hazardous waste at the Facility without any means of separation in that, from about July 23, 2001 until about August 1, 2001, Respondent stored at least 64 drums of incompatible corrosive wastes (strong acids and strong bases, strong oxidizers and flammable organic wastes) together in a truck trailer, and from about August 1, 2001, until at least August 9, 2001, Respondent stored at least 80 drums of the same incompatible wastes together with out adequate separation on the QA pad.

3.2.6. **Inadequate Operating Records.** The Respondents violated California Code of Regulations, t22, section 66265.73(b)(1)(2) and (3), Section 7.1 of the September 2000 Stipulation and Order, and Section 4.9 of the March 2001 Order in that Respondents failed to maintain the required information in the operating records at the Facility, including a description of hazardous waste received, the methods and dates of storage or

transfer of each hazardous waste, and the location of each hazardous waste within the Facility and quantity at each location, as follows:

3.2.6.1. On or about February 6, 2001, Respondents failed to record in the operating record any information about the following wastes: hazardous waste that was stored on site in trailers, hazardous waste that was stored in the Recyclable Materials pad, and hazardous waste thorium nitrate.

3.2.6.2. On or about February 7, 2001, Respondents failed to record in the operating record at least 12 five-gallon containers and one 55-gallon container of hazardous waste containing wipes contaminated with lead styphnate and lead azide. The containers were not labeled as hazardous waste. The Respondents could not identify these wastes through the operating record, and had allowed the wastes to dehydrate and become unstable.

3.2.6.3. On or about February 15, 2001, Respondents failed to record the type and quantity of solid oxidizers and organics which were commingled and consolidated near the Oxidizer Bay. As a result of commingling these wastes, a fire occurred in the Oxidizer Bay on February 16, 2001.

3.2.6.4. On or about February 16, 2001, Respondents' operating record misidentified the contents of two containers of hazardous waste, and listed as being on site hazardous wastes

that had been shipped off site.

3.2.6.5. On or about February 16, 2001, the Respondents conducted an inventory of containers of hazardous wastes that did not have bar codes or other labels. The Respondents' inventory documented over 50 containers without bar codes at the Facility.

3.2.6.6. On or about February 28, 2001, Respondents failed to accurately maintain operating records for waste explosives, to wit:

- a) at least seven containers of explosive wastes did not have bar codes or hazardous waste labels;

- b) at least 2,000 pounds of waste explosives in magazine #6 were incorrectly recorded as being located in magazine #5;

- c) at least 1,500 pounds of hazardous waste explosives in magazine #7 were not recorded in the operating records.

3.2.6.7. On or about March 22, 2001, consolidation logs for a specific container (a 55-gallon drum of mixed bases in intermodal trailer #7) could not be produced, and numerous containers (by Respondents' estimate, approximately 200-300 containers) were without bar codes or hazardous waste labels.

3.2.6.8. On or about April 3, 2001, Respondents did not have consolidation logs for a roll-off bin of non-RCRA waste sent off about March 21, 2001; several bar codes were not in the Denova computer tracking system; several containers did not have

bar codes; on manifest 20127299, only two bar codes numbers were assigned for the receipt of three drums. This manifest was recorded as being received on July 5, 2001, but was signed by the generator and transporter on July 7, 2000; and bar codes on line b of manifest 20251564, received on July 10, 2000, cross reference an outbound manifest 20041215, which was sent off site on June 6, 2000.

3.2.7. **False Statements/Misrepresentations.** The Respondents violated Health and Safety Code, section 25189.2, in that Respondents made false statements on documents used for the purposes of compliance with the Hazardous Waste Control Act, to wit:

3.2.7.1. Respondents completed a manifest, number 20041080, dated May 26, 2000, on which a waste was described as a non-RCRA waste; the waste was described in the operating record as a D001 RCRA waste.

3.2.7.2. Respondents completed a manifest, number 20746424, dated March 21, 2001, on which a waste was described as a non-RCRA waste. The waste was subsequently sampled by the Department and found to be a RCRA waste.

3.2.7.3. On or about April 3, 2001, Respondents sent away from the Facility at least two manifested loads of hazardous waste for which the manifests did not describe accurately the contents of the waste. A load in which RCRA wastes were combined

was described as "non-RCRA", and a load of corrosive liquids was manifested away as waste flammable liquids (manifest number 99671390).

3.2.7.4. On or about January 23, and February 6-8, 2001, the Department determined that, on numerous occasions, Respondents made false statements in the Facility operating records regarding the amount of hazardous waste stored at the Facility, including, but not limited to, the following dates:

Date	Amount recorded in operating record (gallons)	Actual amount (gallons)
December 4, 2000	4,551	33,950
December 5, 2000	5,051	30,195
December 6, 2000	19,876	35,935
December 7, 2000	19,931	36,810
December 8, 2000	22,857	36,431

3.2.8. **Storage in Unauthorized Locations.** On or about January 23, 2001; February 6-9, 20, and 28, 2001; March 1 and 22, 2001; and April 3, 2001, the Respondents violated Health and Safety Code, section 25200.5 (b), section 7.1 of the September 2000 Stipulation and Order, and Section 4.5. of the March 2001 Order in that Respondents stored hazardous wastes in unauthorized locations at the Facility, including, but not limited to: tractor

trailers, roll-off bins, and explosive magazines.

3.2.8.1. On or about February 20 and 28, 2001, Respondents stored three 55-gallon drums of hazardous waste tear gas canisters in the Quality Assurance Pad (QA Pad) area of the Facility. Some of these canisters were duds and are required to be stored as a hazardous waste explosive.

3.2.8.2. On and after July 23, 2001, Respondents stored at least 80 55-gallon drums and one 250-gallon tote in unauthorized locations at the Facility in that between about July 23, 2001, and August 1, 2001, Respondent stored the hazardous waste on a truck trailer and on a loading dock, and between about August 1, 2001 and at least August 9, 2001, at the QA/QC pad. Respondents are not authorized to store wastes at these locations longer than 48 hours.

3.2.9. **Open Containers.** The Respondents violated California Code of Regulations, t22, section 66265.173(a) and 66265.31 in that Respondents failed to keep containers of hazardous waste closed except when adding or removing waste, to wit:

3.2.9.1. On or about February 28, 2001, Respondents stored at least 50 containers of hazardous waste open.

3.2.9.2. On or about March 22, 2001, Respondents stored at least four containers of hazardous waste open.

3.2.9.3. On or about April 3, 2001, Respondents stored at least four containers of hazardous waste open.

3.2.9.4. On or about August 1, 2001, Respondents stored hazardous waste in containers that were not closed. Respondents stored hazardous waste under conditions that caused excessive pressures in the containers, and, as a result, Respondents allowed the pressure to escape through open bungs. The containers were left open and released their contents, from about July 31, 2001, until at least August 6, 2001.

3.2.10. **Inadequate Aisle Space.** The Respondents violated California Code of Regulations, t22, section 66265.35, and section 7.1 of the September 2000 Stipulation and Order in that on or about February 28, 2001, Respondents stored hazardous waste in the Recycling Bay without adequate aisle space.

3.2.11. **Storage for Over One Year.** The Respondents violated Section II. 1(a) of the Interim Status Document and section 7.1 of the September 2000 Stipulation and Order in that Respondents stored hazardous waste at the Facility for longer than one year, to wit:

3.2.11.1. On or about February 28, 2001, Respondents stored longer than one year at least 20 containers of hazardous waste and at least 184 containers of explosive hazardous waste at the intermodal trailers #8 and #10, at the reactive storage igloos, and at the recyclable materials pad.

3.2.11.2. On or about March 22, 2001, Respondents stored a container with manifest number 99790089 marked on it in the

Reactive Bay. This manifest had been received by Denova on 1/21/00.

3.2.11.3. On or about April 3, 2001, Respondents stored at least ten manifested loads of hazardous waste longer than one year.

3.2.11.4. On or about April 25, 2001, Respondents stored at least 30 hazardous waste containers for greater than one year.

3.2.12. **Inadequate Containers.** The Respondents violated California Code of Regulations, t22, section 66265.171 and 66265.31, in that Respondents stored hazardous waste in containers that were not in good condition, to wit:

3.2.12.1. On or about February 7, 2001, Respondents stored oily waste with isocyanates in a container that was leaking on the concrete in the RCRA/non-RCRA Consolidation pad.

3.2.12.2. On or about February 28, 2001, Respondents stored hazardous waste in several one-cubic-yard cardboard boxes that were saturated with water; in three roll-off bins that were leaking on unprotected soil; PETN, a high explosive, in four drums that were bulging; and in at least 16 other containers holding hazardous waste which were not in good condition.

3.2.12.3. On or about March 22, 2001, containers on the Recyclable Materials Pad were leaking their contents onto the concrete; 5-gallon container of an oxidizer located between intermodal trailers #8 and #9 was damaged; a 30-gallon fibreboard



container of glycolic acid in intermodal trailer #1 was damaged and deteriorated; a cylinder in the Reactive Bay had leaked its contents.

3.2.12.4. On or about January 23, 2001; February 6, 7, 8, 9, 20, and 28, 2001; March 1 and 22, 2001; and April 3, 2001, the Department observed that the Respondents stored three roll-off bins containing hazardous waste that had released and were releasing liquids directly onto the unpaved dirt and gravel portion of the Facility

3.2.13. **Manifest Document Numbers.** The Respondents violated California Code of Regulations, t22, section 66262.32(b), in that on or about January 23, January 24, February 6 and February 9, 2001, Respondents routinely failed to mark the manifest document number on containers of hazardous waste that Respondents offered for transportation

3.2.14. **Unlabeled Containers.** The Respondents violated Section II. 2.c). of the Interim Status Document and section 7.1 of the September 2000 Stipulation and Order, in that on or about February 28, 2001, Respondents failed to properly label containers stored longer than 90 days at the Facility. At least 107 containers had neither a bar code nor a hazardous waste label, and at least 98 containers had a bar code label but the hazardous waste label was either missing, incomplete, or illegible.

3.2.15. **Inadequate Emergency Equipment.** The Respondents violated California Code of Regulations, t22, section 66265.33, in that on or about March 1, 2001, Respondents failed to maintain decontamination equipment to assure its proper operation in time of emergency, to wit: the water supply was shut off to the eye-wash/emergency shower between intermodal trailers #4 and #5.

3.2.16. **Inadequate Financial Assurance.** The Respondents violated California Code of Regulations, t22, section 66265.143(b)(3), in that on or before May 11, 2001, Respondents failed to establish a stand-by trust fund as required to accompany the surety bond as financial assurance for closure.

3.2.17.1. **Inadequate Financial Responsibility.** The Respondents violated California Code of Regulations, t22, section 66265.147, in that on or before May 2, 2001, Respondents failed to have adequate insurance coverage for third party liability:

3.2.17.2. The Respondents violated California Code of Regulations, t22, section 66265.147, in that after April 1, 2001, Respondents failed to have insurance coverage for third party liability.

3.2.18. **Failure to Complete Closure.** The Respondents violated California Code of Regulations, t22, section 66265.113 and 66265.115, in that on or about February 23, 2001, Respondents failed to complete closure activities and submit the Closure Certification Report for the Open Burn/Open Detonation unit,

which was due to the Department on February 23, 2001.

3.2.19. **Failure to Attend Compliance School.** Respondents violated paragraph 7.2 of the September 2000 Stipulation and Order, in that on or before March 27, 2001, Respondents failed to send any employees to compliance school within 195 days of the date of the Stipulation.

3.2.20. **Failure to Amend Contingency Plan.** Respondents violated California Code of Regulations, t22, section 66265.52(d) and 66265.54(d), in that on or about February 16, 2001, Respondents failed to amend the facility contingency plan when the emergency coordinators left the company. The contingency plan listed as emergency coordinators two persons who had left the company six months and four months before the date of the inspection.

3.2.21. **Failure to Train Facility Employees.** Respondents violated California Code of Regulations, t22, section 66265.16 in that Respondents failed to provide adequate training to Facility employees and failed to maintain required records of employee training, in that:

3.2.21.1 On or about February 20, 2001, Respondents had no training records for employees.

3.2.21.2 On or about June 6-7, 2001, Respondents failed to have an adequate employee training program; Respondents had no records that demonstrated an organized on-site training program

for at least four workers.

3.2.21.3. On or about August 6-9, 2001, Respondents failed to provide training in emergency response to at least three employees, and failed to have training records for at least three employees.

**C. Imminent and Substantial Endangerment Determination**

3.3.1. In the March 2001 Order, the Department cited Denova for numerous and repeated HWCL violations at the Facility and the Department made a determination that conditions at the Facility may pose an imminent and substantial endangerment to the public health or safety or the environment. After the issuance of the March 2001 Order, the Department conducted follow-up inspections and visits of the Facility and has determined that many of the HWCL violations cited in the March 2001 Order have not been corrected and are continuing. The Department has determined that the lengthy history of noncompliance at the Facility, including the following violations, all contribute to the finding of imminent and substantial endangerment.

3.3.1.1. **Failure to Minimize the Possibility of Fire, Explosions, and/or Releases:** As set forth in paragraph 3.2.3. and following, Respondents failed and continue to fail to operate the Facility to minimize the possibility of a fire, explosion, and/or releases.

3.3.1.2. **Failure to Analyze Hazardous Waste.** As set forth

in paragraphs 3.2.4. and following, Respondents have failed and continue to fail to obtain detailed chemical and physical analyses of the hazardous waste that Respondents receive at the Facility. The most recent inspections, conducted on June 6-7, 2001, and August 6-9, 2001, found that Respondents consolidated and mixed unknown hazardous waste streams, and shipped unknown hazardous waste off site, without first obtaining a detailed chemical and physical analysis of a representative sample of the hazardous wastes.

3.3.1.3. **Failure to Maintain Accurate Operating Records.** As set forth in paragraph 3.2.6. and following, Respondents failed and continue to fail to maintain accurate operating records for the hazardous waste at the Facility. On or about the most recent inspections, dated June 6-7, 2001 and August 6-9, 2001, Respondents could not provide the Department records showing what wastes were consolidated into bins at the Facility, and could not provide records of waste analyses or profiles for waste at the Facility.

3.3.1.4. **Failure to Separate Incompatible Wastes** As set forth in paragraph 3.2.5. and following, Respondents failed and continued to fail to separate incompatible wastes stored nearby. From about July 23, 2001 until about August 1, 2001, Respondent stored at least 64 drums of incompatible corrosive wastes (strong acids and strong bases, strong oxidizers and flammable organic

wastes) together in a truck trailer, and from about August 1, 2001, until at least August 9, 2001, Respondent stored at least 80 drums of incompatible wastes together without adequate separation on the QA pad.

3.3.1.5. **Storage exceeding authorized capacity:** As set forth in paragraph 3.2.1. and following, Respondents have repeatedly exceeded Denova's authorized design storage capacity. Exceeding authorized storage capacity may result in the Respondents being unable to properly manage, handle, and track the excessive amounts of hazardous waste, which may, in turn, result in fire, explosions, and/or releases of hazardous waste or hazardous waste constituents.

3.3.1.6. **Failure to Train Facility Employees.** As described in paragraph 3.2.21., Respondents violated California Code of Regulations, t22, section 66265.16 in that Respondents have failed and continue to fail to provide adequate training, and failed to maintain records of employee training.

3.3.1.7. **Other Violations Contributing to Imminent and Substantial Endangerment.** The Respondents continue to store hazardous waste outside authorized storage areas (see paragraph 3.2.8.) and to store hazardous waste longer than one year (see paragraph 3.2.11.). These violations were found to be repeated in the most recent inspections of the Facility by the Department on June 6-7, 2001, and/or August 6-9, 2001.

3.3.2. **Combined Effect of Violations.** The combined effect of the violations listed in 3.3.1. and following, is that the Respondents are accepting, storing, and consolidating unknown hazardous wastes; Respondents are storing incompatible hazardous wastes without separation and without an adequate employee training program; Respondents are failing to keep accurate operating records; and Respondents are failing to operate the Facility to minimize the possibility of fires, explosions or releases. Because the Facility is authorized to accept, and does store, a wide variety of hazardous waste, including reactive wastes and high explosive hazardous wastes. There is a very high potential for a serious accident due to the mishandling or mixing of incompatible wastes and the improper storage and maintenance of explosive wastes.

3.3.2.1. The failure to conduct waste analyses and the lack of adequate record keeping and container labeling in the past, has left the Facility with a large number of unidentified wastes on site. Respondents continue to store together and consolidate the unknown wastes without first determining whether the wastes are compatible, which creates a serious threat of an uncontrolled reaction.

3.3.2.2. In the event of an uncontrolled reaction, the employees are not trained in responding to emergencies, thereby increasing the potential harm to public health or safety or the

environment. At least one serious accident, a fire that destroyed a storage area, has already occurred at the Facility. This facility stores large amounts of high explosives, both waste and product, on site. As set forth in paragraphs 3.2.3.1.1 and 3.2.3.8., above, unstable explosives stored at the Facility have had to be detonated by governmental agencies.

3.3.2.3. The failure of Respondents to obtain adequate analyses of the hazardous waste at the site increases the threat that Respondents will send mis-identified or unidentified wastes to disposal or treatment facilities that are not authorized and not designed to accept those wastes. Sending wastes to such facilities presents a potential for fires, explosions or releases at those facilities.

3.3.3. **Health Effects.** There is a present threat to the employees and the surrounding human population of acute trauma from the release of highly acidic or toxic liquids, gases, vapor, dusts or mists, due to explosion or fire involving the hazardous wastes at the Site. An additional threat is the exposure of people and the contamination of land surrounding the Site by hazardous waste constituents and the by-products of fire or explosion.

3.3.4. **Routes of Exposure.** In the event of a fire or explosion at the site, the expected routes of exposure are inhalation, ingestion, and dermal absorption. Smoke, fumes, and



solid particles of hazardous waste may be spread over a wide area surrounding the Site, including residential areas and a school within 750 yards. Toxic constituents of the hazardous waste, or toxic by-products of fires or explosions may be inhaled as smoke, fumes, gases, or mists; or may contaminate food, soil, and objects, and be ingested or absorbed through the skin. Direct contact with acids or caustics released from the Site due to improper management of hazardous wastes can cause burns, injury, and property damage.

3.3.5. **Population at Risk.** The population at risk includes those residents and employees of businesses in the area surrounding the Site and any person or employee at the Site.

3.3.6. **Determination.** The Department hereby determines that the violations associated with this Order, when viewed in conjunction with the lengthy history of serious noncompliance at the Facility, may pose an imminent and substantial endangerment to the public health or safety or to the environment. The Department also determines that the provisions of this order are so related that the public health, safety, or the environment, can be protected only by immediate compliance with the Schedule for Compliance contained in section 3.4 of this Order. These determinations are based on the above findings.

**D. SCHEDULE FOR IMMEDIATE COMPLIANCE:**

3.4. Based on the foregoing Determination of Violations,

section B., and Imminent and Substantial Endangerment Determination, section C., IT IS HEREBY ORDERED THAT:

3.4.1. Effective immediately, Respondents shall cease accepting, consolidating, or offering for transport hazardous waste at the Facility until the Department determines that Respondents have complied with the requirements for personnel training in California Code of Regulations, t22, section 66265.16 and with the requirements for waste analysis in California Code of Regulations, t22, section 66265.13. and sections 3.4.1.1. and 3.4.1.2. below. (Copies of the sections of the regulations are attached as exhibit 4.)

3.4.1.1. Respondents shall submit to the Department, pursuant to section 4.2., below, for review and approval the training records required by California Code of Regulations, t22, section 66265.16(d) for all staff that manage hazardous waste. The records must demonstrate that the Facility personnel have completed the required training.

3.4.1.2. Respondents shall submit to the Department, pursuant to section 4.2., below, for review and approval the following: a) a written description of the equipment and materials Respondents have at the Facility and will use for analyzing wastes as required by the waste analysis plan; b) a written description of the relevant training and qualifications of the personnel that will perform the analyses as required by

the waste analysis plan; and c) a sample of the records of waste analysis and other information that Respondents will record for accepting, consolidating, and offering for transport for each hazardous waste at the facility.

3.4.2. Effective immediately, and until closure of the facility, Respondents shall operate the Facility within the authorized design storage capacity of 26,500 gallons of hazardous waste including explosive wastes.

3.4.3. Effective immediately and until closure of the facility, Respondents shall cease consolidating, commingling, bulking, or mixing any potentially incompatible hazardous wastes at the Facility.

3.4.4. Effective immediately, and until closure of the facility, Respondents shall cease storing containers of incompatible hazardous waste adjacent to each other without adequate separation.

3.4.5. Effective immediately, and until closure of the facility, Respondents shall store hazardous waste only within the existing authorized storage units at the Facility, i.e., the intermodal containers and four explosive igloos at the Facility. Hazardous wastes may be located on the RCRA pad, non-RCRA pad, and Quality Assurance Pad for a maximum of 48 hours for staging purposes only.

3.4.6. Effective immediately, and until closure of the

facility, Respondents shall follow waste analysis procedures as required by California Code of Regulations, t22, section 66265.13 and the Waste Analysis Plan for determining the proper and safe manner to store, transfer, and/or commingle hazardous waste at the Facility.

3.4.7. Effective immediately, and until closure of the facility, Respondents shall record in the operating record for the Facility the description and quantity of all the hazardous waste at the Facility; the location of each hazardous waste at the Facility; and the methods and dates of its transfer, or storage at the Facility. Respondents shall record the results of waste analyses for the wastes Denova receives or sends off site.

3.4.8. Effective immediately, and continuously thereafter, Respondents shall operate the Facility in a manner that minimizes the possibility of a fire, explosion, or release of hazardous waste or hazardous constituents at the Facility.

3.4.9. Effective immediately, and until closure of the facility, Respondents shall keep all containers of hazardous waste closed except when adding or removing waste.

3.4.10. Within 14 days of the effective date of this order, Respondents shall identify all hazardous wastes on site that have been stored on site for longer than one year, and prepare and submit a plan, for review and approval by the Department, for legally disposing of such wastes.

3.4.11. Effective immediately, and until closure of the Facility, Respondents shall place all hazardous wastes on site in containers that are in good condition.

3.4.12. Within 7 days of the effective date of this Order and every 14 days thereafter until all compliance actions are completed to the Department's satisfaction, Respondents shall submit to the Department reports documenting all corrective actions taken to address the violations identified in this Order.

**E. SCHEDULE FOR COMPLIANCE:**

3.5. Based on the foregoing Determination Of Violations, IT IS HEREBY ORDERED THAT:

3.5.1. Effective immediately, and continuously thereafter, Respondents shall maintain aisle space to allow the unobstructed movement of personnel and emergency equipment to any area of the facility.

3.5.2. Within 14 days of the effective date of this order, Respondents shall maintain labels on all hazardous wastes at the Facility.

3.5.3. Effective immediately, and weekly thereafter, Respondents shall inspect and test all facility communications or alarm systems, fire protection equipment, spill control equipment, and decontamination equipment and ensure that all of the systems and equipment are in proper working order.

3.5.3. Effective immediately, Respondents shall complete

hazardous waste manifests with the correct and accurate description of the wastes being shipped.

3.5.4. Effective immediately, Respondents shall mark all containers of hazardous waste offered for transport off site with the Manifest Document Number.

3.5.5. Within 14 days of the effective date of this order, Respondents shall establish and maintain a stand-by trust, or other financial mechanism, that complies with California Code of Regulations, t22, section 66265.143, as part of Denova's closure cost assurance.

3.5.6. Within 30 days of the effective date of this order, Respondents shall submit to the Department proof of insurance and the insurance policy, or other financial mechanism, that complies with the financial liability requirements in California Code of Regulations, t22, section 66265.147.

3.5.7. Within 60 days of the effective date of this Order, Respondents shall complete the closure of the open burn/open detonation unit according to the approved closure plan and submit to the Department the Closure Certification Report.

3.5.8. Effective immediately, Respondents shall amend the facility contingency plan to list the names, addresses, and phone numbers (office and home) of the current Emergency Coordinators. Copies of the amended plan shall be maintained at the facility and sent to all local police and fire departments, hospitals, and

State and local emergency response teams that may be called upon to provide emergency services.

**F. PENALTY**

3.6. Pursuant to Health and Safety Code section 25187, the Department may impose a penalty for violations of HWCL. The penalty in this Order is based on the violations found in inspections prior to May 1, 2001. The Department reserves the right to impose additional penalties for violations after May 1, 2001.

3.6.1. Based on the violations prior to May 1, 2001, set forth in the foregoing DETERMINATION OF VIOLATIONS in Section III. B., the Department sets the amount of Respondents' penalty at \$2,494,318.

3.6.2. Payment is due within 30 days from the effective date of the Order.

3.6.3. Respondents' check shall be made payable to the Department of Toxic Substances Control, and shall identify the Respondents and Docket Number, as shown in the heading of this case. Respondents shall deliver the penalty payment to:

Department of Toxic Substances Control  
Accounting Office  
1001 I Street, 21st Floor  
P. O. Box 806  
Sacramento, California 95812-0806

A photocopy of the check shall be sent to:

Mr. Kit Davis, Chief

Task Force Support and Special Investigations Branch  
Department of Toxic Substances Control  
8800 Cal Center Drive  
Sacramento, California 95826-3200

#### **IV. GENERAL PROVISIONS**

4.1. The paragraphs of this section are applicable to the Revocation Order and the Amended Imminent and Substantial Endangerment Order, unless stated otherwise.

4.2. **Submittals.** All submittals from a Respondent pursuant to this Order shall be sent simultaneously to:

Kit Davis, Branch Chief  
Task Force Support and Special Investigations Branch  
Department of Toxic Substances Control  
8800 Cal Center Drive  
Sacramento, California 95826-3200

and

Phillip Blum, P.E., Unit Chief  
Task Force Support and Special Investigations Branch  
1011 North Grandview Avenue  
Glendale, California 91201

and

Karen Baker, CEG, CHG, Chief  
Geology and Corrective Action Branch  
Department of Toxic Substances Control  
5796 Corporate Avenue  
Cypress, California 90630

4.3. **Communications.** All approvals and decisions of the Department made regarding submittals and notifications will be communicated to Respondents in writing by the Task Force Support and Special Investigations Branch Chief, Department of Toxic Substances Control, or his/her designee. No informal advice,



guidance, suggestions, or comments by the Department regarding reports, plans, specifications, schedules, or any other writings by Respondent shall be construed to relieve Respondents of the obligation to obtain such formal approvals as may be required.

4.4. **Department Review and Approval.** If the Department determines that any report, plan, schedule, or other document submitted for approval pursuant to this Order fails to comply with the Order or fails to protect public health or safety or the environment, the Department may:

a. Modify the document as deemed necessary and approve the document as modified, or

b. Return the document to Respondents with recommended changes and a date by which Respondents must submit to the Department a revised document incorporating the recommended changes.

4.5. **Compliance with Applicable Laws:** Respondents shall carry out this Order in compliance with all local, State, and federal requirements, including but not limited to requirements to obtain permits and to assure worker safety.

4.6. **Endangerment during Implementation:** In the event that the Department determines that any circumstances or activity (whether or not pursued in compliance with this Order) are creating a further imminent or substantial endangerment to the health or welfare of people on the Facility or in the surrounding

area or to the environment, the Department may order Respondents to stop further implementation of this Order for such period of time as needed to abate the endangerment. Any deadline in this Order directly affected by a Stop Work Order under this section shall be extended for the term of the Stop Work Order.

4.7. **Liability**: Nothing in this Order shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of past, current, or future operations of Respondents. Notwithstanding compliance with the terms of this Order, Respondents may be required to take further actions as are necessary to protect public health or welfare or the environment.

4.8. **Facility Access**: Access to the Facility shall be provided at all reasonable times to employees, contractors, and consultants of the Department, and any agency having jurisdiction. Nothing in this Order is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law. The Department and its authorized representatives shall have the authority to enter and move freely about all property at the Facility at all reasonable times for purposes including but not limited to: inspecting records, operating logs, and contracts relating to the Facility; reviewing the progress of Respondents in carrying out the terms of this Order; and conducting such tests as the Department may

deem necessary. Respondents shall permit such persons to inspect and copy all records, documents, and other writings, including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this Order.

4.9. **Data and Document Availability.** Respondents shall permit the Department and its authorized representatives to inspect and copy all sampling, testing, monitoring, and other data generated by Respondents or on Respondents' behalf in any way pertaining to work undertaken pursuant to this Order. Respondents shall allow the Department and its authorized representatives to take duplicates of any samples collected by Respondent pursuant to this Order. Respondents shall maintain a central depository of the data, reports, and other documents prepared pursuant to this Order. All such data, reports, and other documents shall be preserved by Respondents for a minimum of six years after the conclusion of all activities under this Order. If the Department requests that some or all of these documents be preserved for a longer period of time, Respondents shall either comply with that request, deliver the documents to the Department, or permit the Department to copy the documents prior to destruction. Respondents shall notify the Department in writing at least six months prior to destroying any documents prepared pursuant to this Order.

4.10. **Government Liabilities:** The State of California

shall not be liable for injuries or damages to persons or property resulting from acts or omissions by Respondents or related parties in carrying out activities pursuant to this Order, nor shall the State of California be held as a party to any contract entered into by Respondents or its agents in carrying out activities pursuant to the Order.

4.11. **Incorporation of Plans and Reports.** All plans, schedules, and reports that require Department approval and are submitted by Respondents pursuant to this Order are incorporated in this Order upon approval by the Department.

4.12. **Extension Request:** If Respondents are unable to perform any activity or submit any document within the time required under this Order, the Respondents may, prior to expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay.

4.13. **Extension Approvals:** If the Department determines that good cause exists for an extension, it will grant the request and specify in writing a new compliance schedule.

4.14. **Additional Enforcement Actions:** By issuance of this Order, the Department does not waive the right to take further enforcement actions.

4.15. **Penalties for Noncompliance:** Failure to comply with the terms of this Order may also subject Respondents to costs,

penalties, and/or punitive damages for any costs incurred by the Department or other government agencies as a result of such failure, as provided by Health and Safety Code, section 25188 and other applicable provisions of law.

4.16. **Exhibits.** All exhibits attached to this Order are incorporated herein by this reference.

4.17. **Parties Bound:** This Order shall apply to and be binding upon Respondents, and Denova's officers, directors, agents, employees, contractors, consultants, receivers, trustees, successors, and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations.

4.18. **Days.** "Days" for purposes of this Order means calendar days.

4.19. **Right to a Hearing**

4.19.1. Denova may request a hearing to challenge the Revocation Order in Section II. Appeal procedures are described in the attached Statement to Respondent.

4.19.2. Denova has submitted a Notice of Defense to the Department in response to the March 2001 Order issued on March 9, 2001. Because this Order amends the March 2001 Order, the Notice of Defense for the March 2001 Order will constitute a Notice of Defense for this Order. A hearing shall be set for this Order.

4.19.3. Under Health and Safety Code, section 25187(f), a request for a hearing shall not stay the effect of the Schedule

for Immediate Compliance for Section III.D. of this Order.

4.20. **Effective Date**

4.20.1. The Revocation Order in Section II is final and effective fifteen days from the date it is served on Denova, unless Denova requests a hearing within the fifteen day period.

4.20.2. As stated in Section III.C. of this Order, the Department finds that the violations described in Section III.B. of this Order, when viewed in conjunction with the lengthy history of serious noncompliance at this Facility, may pose an imminent and substantial endangerment to the public health or safety or the environment. Pursuant to Health and Safety Code section 25187(f), the Schedule for Immediate Compliance in Section III.D. of this Order is effective immediately on the date of issuance indicated below. The Schedule for Compliance in Section III.E. is effective in accordance with sections 11500 et seq. of the Government Code.

(Signatures on following page)

#### IV. SIGNATURES

\_\_[Original signed by]\_\_\_\_

Date\_\_9/6/01\_\_\_\_

Frederick S. Moss, Chief  
Permitting Division  
Department of Toxic Substances Control

\_\_[Original signed by]\_\_\_\_

Date\_\_6 Sept 01\_\_

Kit Davis, Chief  
Task Force Support and Special Investigations Branch  
Department of Toxic Substances Control